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12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14 In re:

15 USA Commercial Mortgage Company,

16 USA Capital Realty Advisors, LLC,<sup>1</sup>

17 USA Capital Diversified Trust Deed Fund,  
18 LLC,

19 USA Capital First Trust Deed Fund, LLC,<sup>2</sup>

20 USA Securities, LLC,<sup>3</sup>

21 Debtors.

22 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

22 Case No. BK-S-06-10725-LBR<sup>1</sup>  
23 Case No. BK-S-06-10726-LBR<sup>1</sup>  
24 Case No. BK-S-06-10727-LBR<sup>2</sup>  
25 Case No. BK-S-06-10728-LBR<sup>2</sup>  
26 Case No. BK-S-06-10729-LBR<sup>3</sup>

27 **CHAPTER 11**

28 Jointly Administered Under Case No.  
29 BK-S-06-10725 LBR

30 **MOTION TO FURTHER EXTEND  
31 DEADLINE TO FILE OBJECTION  
32 TO ALLOWANCE OF CLAIMS  
(with Certificate of Service)**

33 Date: April 30, 2009

34 Time: 9:30 a.m.

35 The USACM Liquidating Trust (the "USACM Trust") by Lewis and Roca LLP, its  
36 counsel, moves this Court for an order pursuant to 11 U.S.C. § 502(b) and Bankruptcy  
37 Rules 3007 and 9006(b)(1) enlarging the deadline for filing objections to allowance of  
38 claims, and in particular unsecured claims, for an additional 120 days from June 9, 2009 to

39 <sup>1</sup> This bankruptcy case was closed on September 23, 2008.

40 <sup>2</sup> This bankruptcy case was closed on October 12, 2007.

41 <sup>3</sup> This bankruptcy case was closed on December 21, 2007.

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1 October 7, 2009. This Motion is based upon the following Memorandum of Points and  
 2 Authorities and is supported by the Court's record and the declaration of Edward M. Burr  
 3 filed this date.

4 The USACM loans that were being serviced by Compass Financial Partners are  
 5 now being serviced by Asset Resolution LLC ("Asset Resolution"). On March 24, 2009,  
 6 the USACM Trust reached a confidentiality agreement with Asset Resolution under which  
 7 Asset Resolution agreed to provide the USACM Trust with information regarding all of  
 8 the loans that it is now servicing. Thus, the USACM Trust expects to begin analyzing and  
 9 processing objections to claims based upon investments in these loans in the near term.

10 **MEMORANDUM**

11 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
 12 Amended Joint Chapter 11 Plan of Reorganization" as modified herein [DE 2376]. Notice  
 13 of Entry of the Confirmation Order was filed on January 9, 2007, and served on January  
 14 11 and 12, 2007 [DE 2387].

15 There is no deadline for claims objections after plan confirmation under either the  
 16 Bankruptcy Code or Rules. However, Section VII A.1 Objection to Claims of the Plan  
 17 provides:

18 Unless otherwise extended by the Court, objections to the  
 19 allowance of Claims and Equity Interests shall be filed and  
 20 served upon the entities asserting such Claims or Equity  
 21 Interests as follows: (A) for any and all Claims and Equity  
 Interests to which the General Bar Date applies, ninety (90)  
 days after the Effective Date....

22 Accordingly, the deadline to file an objection to such Claim was 90 days after the  
 23 Effective Date of March 12, 2007, or June 10, 2007. The Court extended the deadline to  
 24 October 9, 2007, after a hearing [DE 4097]. The Court extended the deadline to October  
 25 15, 2007, by a bridge order after a hearing on August 23, 2007 [DE 4625]. On October  
 26 11, 2007, the Court entered an order [DE 4971] extending the deadline to February 12,

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1 2008. On January 22, 2008, the Court entered an order [DE 5709] extending the deadline  
2 to June 12, 2008. On May 13, 2008, the Court entered an order [DE 6347] extending the  
3 deadline to October 10, 2008. On December 2, 2008, the Court entered an order [DE  
4 6636] extending the deadline to February 9, 2009, and on February 19, 2009 entered an  
5 order [DE 6843] extending the deadline to June 9, 2009.

6 **I. PROOFS OF CLAIM AND CLAIMS OBJECTIONS**

7 **A. Overview**

8 To date there have been seven administrative claims filed totaling \$2,016,499.08;  
9 103 priority claims filed totaling \$7,752,081; 1,676 secured claims filed totaling  
10 \$297,052,436; 1233 unsecured claims filed totaling \$628,464,429; and 78 unknown claims  
11 filed totaling \$389,391. Additional claims were scheduled by Debtors.

12 **B. Objections**

13 To date, the Trust has filed:

- 14 • Objections to 1667 secured claims that have been sustained and reclassified  
15 as unsecured in aggregate of \$296,160,363.
- 16 • Objections to 76 priority claims that have been sustained and reclassified as  
17 unsecured in aggregate of \$5,122,377.
- 18 • Objections to the status of 2 administrative claims totaling \$62,496 that have  
19 been sustained and reclassified as unsecured.
- 20 • Objections to 80 “Wrong Debtor” claims in the amount of \$13,325,322. 62  
21 of those objection were sustained or a stipulation withdrawing the subject  
22 claim was approved.
- 23 • Objections to three claims not enforceable against USACM in the amount of  
24 \$75,503,580; one of these claims totaling \$12,841,680 remains unresolved.
- 25 • Objections to 147 claims for lack of documentation in the amount of  
26 \$19,708,808; 23 of these objections to claims totaling \$1,920,750 were

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1 withdrawn due to claimants sending in sufficient supporting document and  
2 124 objections were sustained totaling \$17,788,058.

- 3 • Objections to 36 claims on miscellaneous grounds in the amount of  
4 \$58,532,258. 6 of these objections were sustained totaling \$27,002,383; 8  
5 objections have stipulated withdrawals totaling \$7,496,447; 4 claims totaling  
6 \$17,772,911 have orders allowing the claim; and 18 objections totaling  
7 \$6,260,517 are unresolved.
- 8 • A total of 1156 objections to Direct Lenders claims in the amount of  
9 \$92,936,789 principally on loans paid in full by the borrowers. The Court  
10 has sustained these objections or the claimants have agreed that they are not  
11 making a claim based upon the paid loan in question, with the exception of  
12 the Copper Sage Commerce I loan which will be heard on 4/30/09.
- 13 • A stipulation has been executed and an order signed which provides for the  
14 disallowance of the Spectrum and Weddell proofs of claim in the amount of  
15 \$125,000,000.
- 16 • The Trust objected to 32 claims arising out of the sale of the Palm Terrace  
17 Apartments. The Court disallowed 31 claims totaling \$62,000,000. The  
18 court partially disallowed \$1,815,000 of the remaining claim by Wow  
19 Enterprises. \$185,000 of the Wow Enterprises claim remains subject to the  
20 Trust's objection.
- 21 • A total of 202 claims totaling \$26,241,354 have been determined to be  
22 amended or duplicated by another claim.
- 23 • An additional 69 claims totaling \$27,002,029 have stipulated withdrawals.  
24 The Trust prosecuted objections to claims, including the Loans known as Opaque  
25 Mt Edge \$7,350,000; HFA Riviera; HFA Riviera 2<sup>nd</sup>; Hasley Canyon; Fiesta Beaumont  
26 \$2.4 million; Ashby Financial Company \$7,200,000; Glendale Tower Partners, LLC;

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1 Golden State Investments II; 5252 Orange, LLC; Midvale Market Place, LLC; Urban  
2 Housing Alliance – 435 Lofts Loan; Boise/Gowen 93, LLC; LCG Gilroy, LLC; J Jireh’s  
3 Corporation; One Point Street, LLC – HFA North Yonkers; Goss Road Loan; Elizabeth  
4 May Real Estate Loan; Slade Development; Wasco Investments, LLC; I-40 Gateway  
5 West, LLC 2nd; Cottonwood Hills, LLC; Standard Property Development, LLC; Meadow  
6 Creek Partners; I-40 Gateway West; Gateway Stone; Palm Springs Marquis Hotel; Roam  
7 Development; Del Valle Isleton; Preserve at Galleria; and Copper Sage Commerce I. The  
8 Trust has other adversary proceedings pending that constitute claims objections.

9 Further, as the Trust has received information from claimants, it has entered into  
10 stipulations for the allowance and disallowance of priority and unsecured claims.

11 Conversely, some claimants have stipulated to either withdraw their claims or have them  
12 reclassified as unsecured claims upon discussion with the USACM Trust’s counsel.

13 The remaining direct lender claims relate to loans that (1) fully performed, but  
14 involve diverted principal; (2) partially performed; (3) are non-performing or still  
15 outstanding. The extent to which those loans perform and/or the direct lenders may be  
16 compensated from the sale of collateral securing the loans has a major impact on the  
17 amount of the claims. The Trustee is handling these claims on a loan by loan basis.

18 Not all of the claims objections can be resolved through motions. The Court has  
19 ordered that the Trust’s objection to claim 1366 of Los Valles Land & Golf, LLC be  
20 consolidated with a related adversary proceeding filed by the Trust against Los Valles and  
21 its guarantor, Dan S. Palmer, Jr.

22 USACM Trust has 99 direct lender loans on record for which investors have filed a  
23 proof of claim asserting money owed. To date USACM Trust has objected to proofs of  
24 claims based on 27 of these loans for having been repaid in full. There are 3 additional  
25 paid in full loans that also have amounts scheduled for unremitted principal. USACM  
26 Trust has objected to the proofs of claims based on these loans, USACM Trust has

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1 objected to the difference between the amount asserted on the proof of claim and the  
2 predetermined amount allowed as an unsecured claim for the subject loan. There will be  
3 an additional 69 direct lender loans outstanding after these loans are resolved, the majority  
4 of these loans were being serviced by Compass Financial. USACM Trust was unable to  
5 obtain the status of these outstanding loans from Compass Financial. However, the  
6 USACM loans that were being serviced by Compass Financial Partners are now being  
7 serviced by Asset Resolution LLC (“Asset Resolution”). On March 24, 2009, the  
8 USACM Trust reached a confidentiality agreement with Asset Resolution under which  
9 Asset Resolution agreed to provide the USACM Trust with information regarding all of  
10 the loans that it is now servicing and give it access to a website maintained by Asset  
11 Resolution that has information about the loans. Thus, the USACM Trust expects to begin  
12 analyzing and processing objections to claims based upon investments in the loans being  
13 serviced by Asset Resolution in the near term. USACM Trust will work through these  
14 loans on a loan by loan basis to determine whether there is a valid basis for the direct  
15 lender claims arising out of them, and if so, in what amount.

16 There are a limited number of non-direct lender claims that USACM Trust may still  
17 object to. USACM Trust is attempting to resolve these without bringing objections, but  
18 may be unable to do so, in which case it will file objections.

## 19 II. DISCUSSION

20 This Court has previously considered and granted, after notice, and without  
21 opposition, extensions of the Plan’s deadline for claim objections under Bankruptcy Rule  
22 9006(b)(1), provides that except as otherwise provided by the Rule:

23 when an act is required or allowed to be done at or within a specified period  
24 by the rules or by a notice given thereunder or by order of court, the court  
25 for cause shall at any time in its discretion (1) with or without motion or  
26 notice order the period enlarged if the request therefore is made before the  
expiration of the period originally prescribed or as extended by a previous  
order or (2) on motion made after the expiration of the specified period,  
permit the act to be done where the failure to act was the result of excusable  
neglect.

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1        This request is supported by good cause. Nothing in the Plan prohibits the Court  
2 from extending the deadline for objecting to claims. The previous extensions have all  
3 been granted without prejudice to further extensions. The Trust has been requesting only  
4 120 day extensions so that the Court could monitor the claims process. The other direct  
5 lender claims to which the Trustee has yet to object relate to loans that (1) partially  
6 performed; (3) are non-performing or still outstanding. The extent to which those loans  
7 perform and/or the direct lenders may be compensated from the sale of collateral securing  
8 the loans has a major impact on the amount of the claims. The Trustee is handling these  
9 claims on a loan by loan basis. There are also some non-direct lender claims to which the  
10 Trust may object.

11        Moreover, as to most of the outstanding loans, Asset Resolution LLC and the  
12 USACM Trust (Placer Vineyards) are still attempting to collect on those loans, and,  
13 therefore, it is difficult, if not impossible, to accurately value the claims at this time.

14        For all of these reasons, the USACM Trust believes it needs more than 120 days to  
15 complete its review of the claims and file objections, but for now asks only for an 120  
16 days, so that the Court can continue to monitor the claims resolution process.

17 **III. CONCLUSION**

18        The USACM Trust requests that the Court enter its order further extending the  
19 deadline to file objections to allowance of claims until October 7, 2009, without prejudice  
20 to an additional extension.

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1 Dated: April 2, 2009.

## LEWIS AND ROCA LLP

By /s/ JH (#018024)

Rob Charles, NV 6593

John Hinderaker, AZ 18024 (pro hac vice)

*Attorneys for USACM Liquidating Trust*

## Proof of service

Copy of the foregoing posted on the USACM Liquidating Trust website and served on April 2, 2009 via email, where an email address is listed, or by first class mail, postage prepaid U.S. Mail, addressed to:

All parties in interest listed on the Post Effective Date Service List on file with the Court

/s/Marilyn Schoenike

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Lewis and Roca LLP